



MINNESOTA  
DEPARTMENT OF  
COMMERCE

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January 9, 2002

RECEIVED

JAN 09 2002

FCC MAIL ROOM

Ms. Magalie Roman Salas  
Secretary Federal Communications Commission  
Office of the Secretary  
445 - 12<sup>th</sup> Street SW  
Washington, D.C. 20024

RE: In the Matter of Performance Measurements and Standards for Interstate Special  
Access Services, CC Docket No. 01-321

Dear Ms. Salas:

On November 19, 2001, the Federal Communications Commission issued a Notice of Proposed Rulemaking In the Matter of Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 1-321, FCC 01-339. Enclosed please find the comments of the Minnesota Department of Commerce.

Should you have any questions, please contact Susan L. Peirce at 651/296-0399.

Sincerely,

*Susan L. Peirce for*

TONY S. MENDOZA  
Assistant Commissioner of Telecommunications

TSM/jd  
Enclosure

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January 9, 2001

Dr. Burl Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101

RE: Comments of the Minnesota Department of Commerce before the Federal  
Communications Commission

Dear Dr. Haar:

On November 19, 2001, the Federal Communications Commission issued a Notice of Proposed Rulemaking In the Matter of Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 1-321, FCC 01-339. Enclosed please find a copy of the comments filed by the Minnesota Department of Commerce with the Federal Communications Commission. The Department is providing a copy of its comments to the Minnesota Public Utilities Commission for informational purposes.

Should you or Commission staff have any questions regarding these comments, please contact me at 651/296-0399.

Sincerely,

SUSAN L. PEIRCE  
Rate Analyst

SLP/jd  
Enclosure

**Before the  
Federal Communications Commission**

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In the Matter of

Performance Measurements and Standards for Interstate Special Access Services	) ) )	CC Docket No. 01-321
Petition of U S WEST, Inc. for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S WEST's Services	) ) ) )	CC Docket No. 00-51
Petition of Association for Local Telecommunications Services for Declaratory Ruling	) ) )	CC Docket Nos. 98-147, 96-98, 98-141
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	) ) )	CC Docket No. 96-149
2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements	) ) )	CC Docket No. 00-229
AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Need to Ensure Compliance by ILECs with their Statutory Obligations regarding Special Access Services	) ) ) ) ) ) )	RM 10329

**Comments of the Minnesota Department of Commerce**

Susan L. Peirce  
Rate Analyst  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
January 19, 2002

**Before the  
Federal Communications Commission**

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In the Matter of

Performance Measurements and Standards ) for Interstate Special Access Services ) )	CC Docket No. 01-321
Petition of U S WEST, Inc. for a Declaratory ) Ruling Preempting State Commission ) Proceedings to Regulate U S WEST's ) Services )	CC Docket No. 00-51
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**Comments of the Minnesota Department of Commerce**

Pursuant to the Notice of Proposed Rulemaking (NPRM) issued November 19, 2001, the Minnesota Department of Commerce ("the Department" or "MN DOC") hereby files its comments. In its NPRM, the FCC sought comment on whether to adopt performance measurements and standards for evaluating incumbent local exchange carrier performance in the provisioning of special access services. The Department applauds the FCC's decision to address special access service quality issues.

To achieve these ends, the Department offers the following general principles that it believes the FCC should follow in adopting any performance standards:

**National performance measurements and standards for special access service should not preempt state Commission efforts to regulate service quality performance.**

Special access services may be ordered out of either federal or state tariffs. In many cases, the facilities involved are "mixed use" facilities, providing both interstate and intrastate services. While facilities may be classified as interstate facilities according to FCC cost allocation rules, the Minnesota Public Utilities Commission (MPUC) has found that such classification for tariff purposes does not preempt state authority over the quality of intrastate services carried across such facilities. In a complaint proceeding brought by AT&T Communications of the Midwest, Inc. against U S WEST Communications, Inc., the MPUC found that it has jurisdiction over the quality of intrastate access services, whether provided under state or federal tariff. (August 15, 2000, MPUC Order Finding Jurisdiction, Rejecting Claims for Relief, and Opening Investigation, In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against U S WEST Communications, Inc. regarding access services.)

The MPUC's jurisdictional finding was consistent with Title II of the Communications Act, which creates a system of dual federal and state jurisdiction over telecommunications service. *Louisiana Public Service Commission v. Federal Communications Commission*, 476 U.S. 355 (1986). While the Act gave jurisdiction over interstate communications to the FCC, savings clauses were inserted into the Act to ensure the continuation of state authority over telecommunications services within states:

47 U.S.C. § 152 (b) . . . nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service.

47 U.S.C. § 261 (b) Existing State regulations. Nothing in this part shall be construed to prohibit the Commission from enforcing regulations prescribed prior to February 8, 1996, in fulfilling the requirements of this part, to the extent that such regulations are not inconsistent with the provision of this part.

47 U.S.C. § 261 (c) Additional State requirements. Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access,

as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

The Communications Act therefore created a system of dual, concurrent jurisdiction, in which state commissions retain their regulatory authority over intrastate services necessary for the provision of local service or exchange access, "as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part." The Communications Act demonstrated a congressional intent that the FCC will *not* occupy the field of telecommunications regulation, to the exclusion of state regulatory interests.<sup>1</sup>

State concerns regarding service quality will vary from state to state. Any effort to develop national performance standards should preserve the ability of state commissions to address areas of particular concern in their states, and to set standards that may be stricter than those contemplated by the national standards. If national standards fail to provide for the provision of adequate service in a given state, or fail to address a specific state concern, state commissions must maintain their ability to set and enforce adequate service quality standards in their states. State regulatory agencies are on the front lines of the battles long distance providers wage for consistent, adequate access to RBOCs' local networks. For this reason, state regulatory agencies can react more quickly to access service quality problems as they emerge, and can tailor remedies to the particular problems arising within each jurisdiction.

**Special access service quality standards should not undermine the efforts already put forth by states and other entities to develop wholesale service quality standards.**

State commission statutory authority to address service quality efforts varies from state to state. While some state commissions have little authority to address service quality issues, other states have extensive authority to establish standards, and impose penalties for non-compliance. For example, Minnesota statutory and case law provide the Minnesota Public Utilities Commission (MPUC) authority to establish and implement benchmark wholesale service quality standards and enforcement measures. Minnesota Statutes, §§ 237.02, 237.06, 237.011, 237.081, 216.16, 216A.05; U S WEST Communications, Inc. v. Minnesota Public Utilities, Civ. 97-913 ADM/AJB, March 30, 1999.

In addition, incumbent carriers may have voluntarily granted state commissions authority to establish and enforce wholesale service quality standards as part of stipulations to other proceedings. For example, as part of the Merger and Agreement in

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<sup>1</sup> For further discussion of state commission jurisdiction over the quality of intrastate mixed use access services, *see* April 21, 2000 Comments of the Minnesota Department of Commerce in FCC Docket File No. CC 00-51, In the Matter of the Petition of U S WEST, Inc. for Declaratory Ruling Preempting State Commission Proceedings to Regulate U S WEST's Provision of Federally Tariffed Interstate Service.

the U S WEST/Qwest merger proceeding, Qwest agreed to comply with interim wholesale service quality standards and payments, in addition to any requirements and penalties contained in existing interconnection agreements until permanent wholesale standards were developed in a further Commission proceeding, and to participate in the future proceeding. (MPUC June 28, 2000 Order Accepting Settlement Agreements and Approving Merger Subject to Conditions, Docket No. P3009, 3052, 5096, 421,3017/PA-99-1192). The MPUC incorporated into that proceeding a consideration of service quality standards for access services. (MPUC August 15, 2000, Order Finding Jurisdiction, Rejecting Claims for Relief, and Opening Investigation, In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against U S WEST Communications, Inc. regarding access services.) As a result of the merger agreement, and the MPUC's authority under state and federal law, the Department is currently advocating the adoption of specific benchmark standards for both access and wholesale local services in a proceeding before the MPUC. (MPUC Docket No. P421/CI-00-849) Any effort to establish national performance standards should not undermine state efforts, particularly in states with strong state authority, to ensure the provision of high quality service to the residents of their state.

**Standards for special access services must be consistent with standards for other similar services.**

The FCC should ensure that any distinctions between the standards for special access services and standards developed to address the provision of wholesale local service or unbundled network elements are valid. The standard interval for provisioning a DS1 trunk should not differ simply because it is provisioned to provide special access to an interexchange carrier rather than to interconnect a competitive local provider. To make such distinctions simply on the basis of how the service is used could encourage discriminatory treatment between competitors and result in attempts to game the system.

**Any performance standards should address the areas of pre-ordering, ordering and provisioning, maintenance and repair and billing, at a minimum.**

The MN DOC believes that any standards should address the areas of pre-ordering, ordering and provisioning, maintenance and repair and billing, at a minimum. These areas cover the broad range of concerns expressed by carriers in obtaining special access services, and would align with potential standards for wholesale local services. As noted above, the MN DOC recommends that standards for special access services mirror those developed for wholesale local services, and unbundled network elements. Doing so will limit the ability of incumbent providers to discriminate between competitors.

**Any national service quality standards must include strong provisions for ensuring compliance.**

The best national service quality standards will be meaningless without a strong enforcement mechanism to ensure compliance. As with the standards themselves, any enforcement provisions should not preempt the state's ability to address specific service quality concerns where states have such authority. Penalties and remedies established by the FCC must be high enough so that Regional Bell Operating Companies cannot simply absorb penalties as a cost of doing business, with no incentive to provide quality wholesale service. For example, depositions of U S WEST employees taken during the Qwest/U S WEST merger proceeding indicated that while managers were well aware of Minnesota retail service quality performance standards, the Company's internal goals fell far short of Minnesota standards. U S WEST was willing to pay certain levels of penalties rather than strive for a performance level that met its Minnesota service quality obligations. (MPUC Docket No. P-3009.3052,5096,421,3017/PA-99-1192, Depositions of Mike Styba and Denise Firkus)

**Any national service quality standards must have provisions for auditing, ongoing review and possible revisions.**

Years of involvement with service quality standards have taught the MN DOC that the adage the "devil is in the details" holds especially true for service quality standards. Rapid technological changes in the telecommunications industry necessitate an ongoing review process to ensure that service quality standards keep pace with the state of the industry. While consistent month-to-month performance comparisons are necessary in order to evaluate performance over time, periodic scrutiny of the measurements is necessary to ensure that standards continue to accurately reflect what they intend to measure.

Data collected under any measurement scheme must also be audited on a regular basis to verify the raw data, as well as the processes and procedures surrounding data collection and reporting. As the complexity of service quality performance measurements has increased, an audit process becomes more necessary to ensure proper accounting of excluded data and disaggregated data. Auditing is of particular importance when the results are used for determining any type of penalty or performance remedy to CLECs, states, or other entities.

**Conclusion**

The Minnesota Department of Commerce welcomes the FCC's involvement and input on special access service quality standards, and urges the FCC to focus its efforts on developing well-defined, predictable standards, with strong, effective enforcement mechanisms. The FCC must take care, however, not to preempt strong state efforts to address service quality concerns. States have been at the forefront of developing strong service quality standards, and must continue to have a leadership role in addressing the needs of their particular states.



STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) ss  
)

AFFIDAVIT OF SERVICE

I, **Linda Chavez**, being first duly sworn, deposes and says:

That on the **8th** day of **January, 2002**, she served the attached  
**Department of Commerce - Comments**

Docket Number(s): **CC Docket No. 01-321, FCC 01-339**

by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

X by personal service

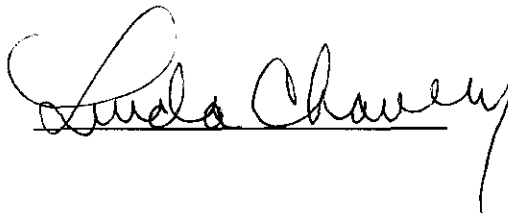
X by express mail

by delivery service

to all persons at the addresses indicated below or on the attached list:

Magalie R. Salas, Secretary  
Federal Communications Commission  
9300 E Hampton Drive  
Capitol Heights, MD 20743

Burl Haar  
PUC  
121 7th Place East, Ste 350  
St. Paul, MN 55101-2147



Subscribed and sworn to before me

this 8th day of January, 2002



